IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4066 of 2001
with
SPECIAL CIVIL APPLICATION NO. 4068 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT & 1 - Petitioner(s)
Versus
UMESHKUMAR KARUNASHANKER ACHARYA - Respondent(s)

==========

Appearance :

Ms. Mita S. Panchal, AGP for Petitioner(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 01/09/2005

ORAL JUDGMENT

Heard learned AGP Ms. Mita S. Panchal for the petitioner State of Gujarat in these two petitions. Though rule and stay has been granted by this court and served upon the respondent, no one has appeared for the respondent in either of the petitions. Stay is operating against the order in question passed by the Labour Court, Surendranagar.

Respondent employee filed recovery application under section 33-C-2 of the Industrial Disputes Act, 1947 claiming certain benefits on the basis of the Government Resolution issued by the State of Gujarat. Labour

Court, Surendranagar decided both the recovery applications on August 1, 2000 and granted amount of Rs.5452.00 being amount of medical allowance, wages of holidays in favour of the respondents. In both the matters, amount of Rs.5452.00 was granted with cost of Rs.200.00.

Learned AGP Ms. Panchal raised contention before this Court that direct recovery application filed by the employee without adjudication of the right in question is not maintainable under section 33-C-2 of the Industrial Disputes Act, 1947. She also submits that the respondent is not entitled for the benefit of the GR, therefore, according to her submission, labour court has committed gross error in allowing recovery applications straightway without adjudication of right of the employee under section 10 of the Industrial Disputes Act, 1947. In short, her submission is, that there is no pre-existing right in favour of

the respondent, therefore, labour court is having no jurisdiction to entertain the said recovery applications, therefore, labour court ought not to have entertained the said recovery applications.

Before the labour court, respondent employee claimed certain benefits based on the GR issued by the Government. Claim of the respondent was for the period from 1st December, 1987 to 31st March, 1988. For the said period, difference of minimum wages, amount of medical allowance and amount of wages for holidays. Reply was filed by the petitioner and averments were made to the effect that the workman has wrongfully interpreted the GR and claimed benefits in recovery application, therefore, employee is not entitled for such benefits. Both the parties before the labour court has not led any oral evidence and both the parties made submissions before the labour court. Labour court considered

application, written statement and documents which were produced before it by the parties. It is a limited claim for a limited period from 1st December, 1987 to 31st March, 1988. Labour court examined the matter and interpreted the GR in light of its earlier decisions in Recovery Application Nos. No. 403/87 to 424/87, 840/90 to 835/90 wherein identical question was examined by the labour court and granted benefit of medical allowance, wages of holidays. Labour court rejected prayer for grant of difference of minimum wages for the aforesaid period. Labour court also considered the contentions raised by the petitioner before the labour court. Ultimately, relying upon its earlier decisions referred to above, labour court passed final order granting benefit of medical allowances and wages of holidays for the aforesaid period.

As regards the contention raised by the learned AGP Ms. Panchal that it was not a pre-

existing right of the employee for which he is entitled to file recovery application and he should have raised industrial dispute under section 10 of the ID Act, 1947 and after adjudication, he can file such application, from perusal of the record, it is clear that no such contention was raised by the petitioner before the labour court. Certain benefits have been granted by the Government by issuing the Government Resolution in favour of the daily wager employees, work charge employees and such other employees and if any employee is entitled for such benefits on the basis of the Government resolution, then, he can file such application claiming such benefits based on such resolution. Only thing required to be examined by the labour court is, whether the employee is entitled for such benefit on the basis of the Government Resolution or not. Rights have been crystallized by the Government by issuing the Government Resolution and for that, the labour court has to

interpret the Resolution. It does not amount to creation of any new or fresh right which would require any adjudication under section 10 of the Industrial Disputes Act, 1947. However, no such specific contention was raised by the petitioner before the labour court that it has no jurisdiction but apart from that, this contention has been answered by this court that there is no question of having any new right requiring adjudication thereof under section 10 of the ID Act, 1947. Labour Court has relied upon earlier decision in Recovery Application No. 403/87 to 424/87, 840/90 to 835/90 wherein identical question was examined by the labour court and benefit was granted on the basis of the Government Resolution and the decision in those matters given by the labour court was accepted by the petitioner, therefore, it considered its earlier decision as it were not challenged by the petitioner before the higher forum but implemented by the petitioner in favour of those

workmen. Therefore, according to my opinion, labour court was right in coming to the conclusion that the respondents are entitled for the benefit of medical allowance on the basis of the GR and wages for holidays. Ultimately, labour court has rejected claim for payment of difference of minimum wages for the aforesaid period and granted Rs.5452.00 in favour of the respondents. Learned AGP Ms. Panchal has not been able to point out whether the earlier decisions of the labour court on the matter at issue were challenged by the petitioner before the higher forum or not, therefore, in absence of such challenge, if the labour court has followed its earlier decisions, then there is nothing wrong in passing the order in question. Considering this aspect also and also looking to the small amount involved, according to my opinion, the labour court has not committed any error which would require interference of this court in these petitions under Article 227 of the Constitution

of India. This Court is having limited powers under Article 227 of the Constitution of India. This Court cannot sit as an appellate authority over the decision of the labour court and cannot reappreciate the evidence which was already appreciated by the labour court. Even if two views are possible, then also, interference under Article 227 of the Constitution of India is not warranted. Therefore, according to my opinion, there is no substance in this petition and both the petitions are required to be dismissed. Accordingly, both the petitions are dismissed. Rule in each of the petitions is discharged. Interim relief, if any, shall stand vacated.

Petitioner is directed to make payment to the respondents as per the order of the labour court within one month from the date of receipt of copy of this order, if so far not made. There is no order as to costs.

[H.K. Rathod,J.)

Vyas